
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LONN BURROWS and JACKIE BURROWS, Plaintiff, v. LOANLEADERS OF AMERICA CORP. et al., Defendant.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS' RULE 56(d) MOTION Case No. 2:14-cv-544 DN BCW District Judge David Nuffer Magistrate Judge Brooke Wells
----------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

This matter was referred to the undersigned pursuant to [28 U.S.C. 636\(b\)\(1\)\(B\)](#) by Chief Judge David Nuffer on August 21, 2014.¹ Pending before the court is Plaintiffs' Motion to Continue pursuant to Rule 56(d). As set forth below the court DENIES the motion and HEREBY ORDERS Plaintiffs to file any opposition to the pending Motion for Judgment on the Pleadings and Motion to Dismiss within twenty (20) days from the date of this order.

Plaintiffs' motion is raised in opposition to Defendant Option One Mortgage's Motion for Judgment on the Pleadings brought pursuant to Federal Rule 12(c).² In addition, Plaintiffs assert the same 56(d) motion in response to Defendant First American Title's Motion to Dismiss based upon Federal Rule 12(b)(6).³ Neither of these motions is brought under Federal Rule 56, which provides for summary judgment, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."⁴ Rather, the respective motions are brought under provisions of Federal Rule 12.

¹ [Docket no. 11](#).

² Docket no. 35.

³ Docket no. 36, docket no. 41.

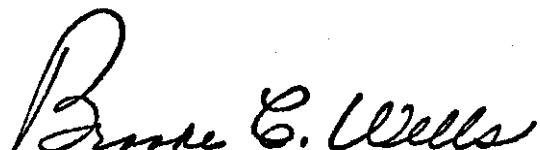
⁴ [Fed. R. Civ. P. 56\(a\)](#).

Federal Rule 56(d) provides that “[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.”⁵ Nowhere in the plain language of Rule 56(d) does it provide that it relates to motions brought under Rule 12. Thus the court finds Plaintiffs’ motion lacking in merit and inapplicable to the instant motions filed by Defendants.

Accordingly, Plaintiffs’ Rule 56(d) Motion is DENIED. Plaintiffs are FURTHER ORDERED to file an opposition to the pending motions within twenty (20) days from the date of this order.

IT IS SO ORDERED.

DATED this 11 September 2015.



Brooke C. Wells
United States Magistrate Judge

⁵ Fed. R. Civ. P. 56(d).